

52. We find that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Unlike the rural mechanism, which uses embedded costs to distribute support on a service area-wide basis, the non-rural mechanism uses a forward-looking cost model to distribute support to individual wire centers where costs exceed the national average by a certain amount.<sup>150</sup> Therefore, under the non-rural methodology, high-density, low-cost wire centers receive little or no high-cost support, thereby protecting against the potential for creamskimming.<sup>151</sup>

53. We urge state commissions to apply the Commission's creamskimming analysis when determining whether to designate an ETC in a rural service area. We reject assertions that a bright-line test is needed to determine whether creamskimming concerns are present.<sup>152</sup> As demonstrated in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, we believe that a rigid standard would fail to take into account variations in population distributions, geographic characteristics, and other individual factors that could affect the outcome of a rural service area creamskimming effects analysis.<sup>153</sup> We believe that the factors indicated above provide states adequate guidance in determining whether an ETC application presents creamskimming concerns.

### 3. Impact on the Fund

54. We decline to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund. As the Commission has found in the past, analyzing the impact of one ETC on the overall fund may be inconclusive.<sup>154</sup> Indeed, given the size of the total high-cost fund — approximately \$3.8 billion a year — it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund.<sup>155</sup> In addition, the

<sup>150</sup> See 47 C.F.R. §§ 54.309; 36.611 to 36.641. We note that rural incumbent LECs may also disaggregate support to the wire center level. See 47 C.F.R. § 54.315.

<sup>151</sup> The non-rural mechanism determines the amount of federal support to be provided to non-rural carriers in each state by comparing the statewide average cost per line, as estimated by the Commission's cost model, to a nationwide cost benchmark that is two standard deviations above the national average cost per line. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 18 FCC Rcd 22559, 22589, para. 49 (2003) (*Ninth Report and Order Remand Order*), appeal pending sub nom. *Qwest Communications International Inc. v. FCC & USA*, Tenth Cir. No. 03-9617; *Vermont Public Service Board v. FCC & USA*, D.C. Cir. No. 04-1015; and *SBC Communications Inc. v. FCC & USA*, D.C. Cir. No. 04-1018. Even in a non-rural study area where an incumbent LEC receives high-cost support, creamskimming concerns would not be present because support is targeted at the wire-center level based on relative cost, thereby calculating high-cost support on a more granular basis and significantly reducing the possibility that carriers would receive a windfall from support for that wire center. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20471, para. 70 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (*Qwest*).

<sup>152</sup> State and Rural Coalition Comments at 9 (recommending a bright-line test for creamskimming when an applicant seeks to serve only the highest-density wire centers in a rural study area).

<sup>153</sup> See *Highland Cellular ETC Designation Order*, at 19 FCC Rcd 6436-37, para. 31; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1579-80, para. 35.

<sup>154</sup> See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432, n. 73; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1577, n. 96.

<sup>155</sup> See Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2005, Appendix HC 1 (Universal Service Administrative Company, November 2, 2004); Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2004, Appendix HC 1 (Universal Service (continued....))

Commission is considering in other proceedings, such as the *Rural Referral Proceeding*, how support is calculated for both rural incumbent LECs and ETCs.<sup>156</sup> We also find, as discussed below, that certain proposals examining the effect on the fund as part of an ETC public interest analysis may be inconsistent with sections 214 and 254 of the Act and related Commission orders.

55. We find that per-line support received by the incumbent LEC should be one of many considerations in our ETC designation analysis. We believe that states making public interest determinations may properly consider the level of federal high-cost per-line support to be received by ETCs. High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages. Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in any area may be the level of per-line support provided to the area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.

56. We decline, however, based on the record before us to adopt a specific national per-line support benchmark for designating ETCs. As the Joint Board noted, “[m]any factors mentioned by commenters as relevant to the public interest determination—such as topography, population density, line density, distance between wire centers, loop lengths and levels of investment—may all affect the level of high-cost support received in an individual service area.”<sup>162</sup> Many commenters have argued that a per-line benchmark that denies entry to competitive ETCs in high-cost areas may prevent consumers in high-cost areas from receiving the benefit of competitive service offerings.<sup>165</sup> Although giving support to ETCs in particularly high-cost areas may increase the size of the fund, we must balance that concern against other objectives, including giving consumers throughout the country access to services comparable to services in urban areas and ensuring competitive neutrality.<sup>163</sup> In addition, as a practical matter, we do not believe we currently have an adequate record to determine what specific benchmark or benchmark should be set.

57. For similar reasons, we also decline to adopt a proposal that would allow only one wireline ETC and one wireless ETC in each service area.<sup>157</sup> Such a proposal that limits the number of ETCs in each service area creates a practical problem of determining which wireless and wireline provider would be selected. We also reject the application of a rebuttable presumption that it is not in the public interest to have more than one ETC in each rural high-cost area.<sup>158</sup> We believe that a more

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Administrative Company, August 2, 2004); Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004, Appendix HC 1 (Universal Service Administrative Company, April 30, 2004); Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter of 2004, Appendix HC 1 (Universal Service Administrative Company, January 30, 2004).

<sup>156</sup>See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, para. 1 (2004) (*Rural Referral Order*).

<sup>162</sup>*Recommended Decision*, 19 FCC Rcd at 4274-75, para. 43.

<sup>165</sup>CTIA Comments at 13, Sprint Comments at 33, WTA Comments at 1, Oregon Commission Comments at 5.

<sup>163</sup>See *First Universal Service Report and Order*, 12 FCC Rcd at 8801-02, paras. 46-48 (pursuant to section 254(b)(7), adopting the principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies).

<sup>157</sup>F. Williamson Comments at 10-11.

<sup>158</sup>Verizon Comments at 9-14.

comprehensive public interest analysis, which considers the specific facts of the application, is a better approach and is consistent with congressional intent. We also reject arguments that we should treat smaller wireless rural carriers differently than larger carriers.<sup>159</sup> We do not believe that subjecting smaller wireless carriers to an expedited ETC application process or a lower level of scrutiny would serve the public interest,<sup>160</sup> and we further believe that it may be contrary to the principle of competitive neutrality.

### C. Permissive Guidelines for State ETC Designation Proceedings

58. We encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order. We also encourage states to impose the annual certification and reporting requirements uniformly on all ETCs they have previously designated. In doing so, we encourage states to conform these guidelines with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable eligibility criteria and reporting requirements. We agree with the Joint Board's recommendation that a rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area. Additionally, a set of guidelines allows for a more predictable application process among the states. We believe that these guidelines will assist states in determining whether the public interest would be served by a carrier's designation as an ETC. We also believe that these guidelines will improve the long-term sustainability of the fund, because, if the guidelines are followed, only fully qualified carriers that are capable of and committed to providing universal service will be able to receive support.

59. As suggested by commenters and the Joint Board, we encourage state commissions to consider the requirements adopted in this Report and Order when examining whether the state should designate a carrier as an ETC. An ETC designation by a state commission can ultimately impact the amount of high-cost and low income monies distributed to an area served by a non-rural carrier,<sup>161</sup> an area served by one or more rural carriers,<sup>162</sup> or both.<sup>163</sup> A single set of guidelines will encourage states to develop a single, consistent body of eligibility standards to be applied in all cases, regardless of the characteristics of the incumbent carrier. As noted above, however, the public interest analysis for ETC applications for areas served by rural carriers should be more rigorous than the analysis of applications for areas served by non-rural carriers.

60. We also find that states that exercise jurisdiction over ETC proceedings should apply these requirements in a manner that will best promote the universal service goals found in section 254(b).<sup>164</sup>

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<sup>159</sup>See Rural Telecommunications Associations Comments at 30-31.

<sup>160</sup>See Rural Telecommunications Associations Comments at 30-33, Attach. A.

<sup>161</sup>See, e.g., *Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996*, RCC Atlantic, Inc. d/b/a Unicel, Docket No. 5918 (Vt. Pub. Serv. Bd. June 26, 2003) (*Vermont Unicel ETC Order*).

<sup>162</sup>See, e.g., *Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (Reg. Comm'n of Ala. Aug. 28, 2003) (*Alaska Digitel ETC Order*).

<sup>163</sup>See 47 U.S.C. 214(e)(2) (noting that state commissions can designate both rural and non-rural carriers providing the carriers meet the requirements of the Act).

<sup>164</sup>47 U.S.C. § 254(b).

While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund. In addition, these guidelines are designed to ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service. Moreover, state commissions that apply these guidelines will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.<sup>165</sup>

61. We decline to mandate that state commissions adopt our requirements for ETC designations.<sup>166</sup> Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.<sup>167</sup> We believe that section 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law.<sup>168</sup> States that exercise jurisdiction over ETCs should apply these requirements in a manner that is consistent with section 214(e)(2) of the Act. Furthermore, state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well-equipped to determine their own ETC eligibility requirements.<sup>169</sup> Because the guidelines we establish in this Report and Order are not binding upon the states, we reject arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations.<sup>170</sup> We also find that federal guidelines are consistent with the holding of United States Court of Appeals for the Fifth Circuit that nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1).<sup>171</sup> Consistent with our adoption of permissive federal guidelines for ETC designation, state commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.

62. We reject the argument that mandatory requirements are necessary to prevent waste, fraud, and abuse in the distribution of high-cost support.<sup>172</sup> We note that safeguards already exist to protect

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<sup>165</sup>See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

<sup>166</sup>See *Recommended Decision*, 19 FCC Rcd at 4261, para. 10. See also ALLTEL Comments at 5, Bell South Comments at 4, Iowa Board Comments at 2, Nebraska Companies Comments at 2, Iowa Board Reply Comments at 2.

<sup>167</sup>47 U.S.C. § 214(e)(2).

<sup>168</sup>See 47 U.S.C. § 214(e)(2).

<sup>169</sup>See *Recommended Decision*, 19 FCC Rcd at 4261, at para. 10.

<sup>170</sup>See *id.* (citing CTIA Comments at 10, Idaho Tel. Ass'n Comments at 12, Montana Telecomms. Ass'n Comments at 10, Nebraska Rural Indep. Cos. Comments at 27).

<sup>171</sup>See *TOPUC v. FCC*, 183 F.3d at 418. The Fifth Circuit Court determined that states may subject carriers designated as ETCs to eligibility requirements in addition to the eligibility requirements detailed in section 214(e)(1) of the Act. *Id.*

<sup>172</sup>See ITTA Comments at 18. Because section 214(e)(2) of the Act gives primary responsibility to the states to designate ETCs, we reject comments that support guidelines that are binding on state commissions to counteract an (continued....)

against the misuse of high-cost support. For example, if a state commission believes that high-cost support is being used by an ETC in a manner that is inconsistent with section 254 of the Act, the state commission may decline to file an annual certification or may withdraw an ETC's designation, which would ensure that funds are no longer distributed to the ETC.<sup>173</sup>

63. We also note that the Commission may institute an inquiry on its own motion to ensure that high-cost support is used "only for the provision, maintenance, and upgrading of facilities and services" for the areas in which ETCs are designated.<sup>174</sup> In addition, if an ETC designated by the Commission fails to fulfill the requirements of sections 214 and 254 of the Act, the Commission has the authority to revoke a carrier's ETC designation.<sup>175</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>176</sup> Consequently, we find that adequate measures exist to prevent waste, fraud and abuse of high-cost support by ETCs. Nevertheless, the Commission will continue to monitor use of universal service funds by ETCs and develop rules as necessary to continue to ensure that funds are used in a manner consistent with section 254 of the Act.

64. Commenters further argue that mandatory requirements are necessary to prevent growth of the universal service fund.<sup>177</sup> As discussed above, the Joint Board is currently contemplating in the *Rural Referral Proceeding* how universal service support can be effectively targeted to rural incumbent LECs and ETCs serving high-cost areas, while protecting against excessive fund growth.<sup>178</sup> We believe that proceeding is a more appropriate forum for determining ways to limit fund growth.

#### D. Administrative Requirements for ETC Designation Proceedings

65. Consistent with USAC's request, we note that all future ETC designation orders adopted by the Commission will include: (1) the name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC's study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) code.<sup>179</sup> In addition, in instances where follow-up filings or other conditions have been imposed before the ETC designation is final, the Commission will notify USAC when the conditions have been fulfilled.<sup>180</sup> We also encourage state commissions to follow these procedures in ETC orders they

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alleged state bias in designating ETCs. See NASCUA Comments at 36, WTA Comments at 9, USTA Comments at 5-6.

<sup>173</sup>See 47 C.F.R. §§ 54.313, 54.314.

<sup>174</sup>47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

<sup>175</sup>See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, at 14174, para. 15 (2000) (*Declaratory Ruling*), recon. pending. See also 47 U.S.C. § 254(e).

<sup>176</sup>See 47 U.S.C. § 503(b).

<sup>177</sup>See Alaska Telephone Comments at 3, ITTA Comments at 18, TDS Comments at 6, Montana ITS Reply Comments at 6.

<sup>178</sup>See *Rural Referral Order*, 19 FCC Rcd at 11538, para. 1.

<sup>179</sup>USAC Comments at 21.

<sup>180</sup>See *id.*

adopt. USAC contends, and we agree, that inclusion of this information in ETC designation orders will greatly facilitate USAC's data validation and other efforts to ensure that all carriers receive high-cost universal service support only in the areas in which they have been deemed eligible.<sup>181</sup>

66. In addition, for carriers that file ETC petitions with the Commission seeking designation on tribal lands, we establish procedures to ensure that the appropriate tribal governments and tribal regulatory authorities are notified and provided with an opportunity to engage in consultation with the Commission and to comment in the ETC designation proceeding.<sup>182</sup> We find these procedures are consistent with the Commission's *Tribal Policy Statement*, released in June 2000, which commits the Commission "to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources."<sup>183</sup> Through consultation, the Commission and the tribal government have an opportunity to discuss how the ETC petition affects public interests of the particular tribal community, for example, the effects of the ETC designation on tribal self-determination efforts and potential economic opportunities, and on the tribal government's own communications priorities and goals, which the Commission recognizes as the sovereign right of tribal governments.<sup>184</sup>

67. Specifically, the Commission requires that any applicant seeking ETC designation on tribal lands before the Commission provide copies of its petition to the affected tribal governments and tribal regulatory authorities at the time of filing.<sup>185</sup> In addition, the Commission will send the relevant public notice seeking comment on those petitions to the affected tribal governments and tribal regulatory authorities by overnight express mail.<sup>186</sup> As with the other guidelines adopted herein, we encourage state commissions to follow these guidelines for ETC designation proceedings affecting tribal lands so that the appropriate tribal governments and tribal regulatory authorities are notified of any tribal ETC petitions, related comment cycles or other opportunities to consult with the state commission and participate in the specific ETC designation proceeding.<sup>187</sup>

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<sup>181</sup>*Id.*

<sup>182</sup>See NTTA Comments at 2; NNPC Reply Comments at 2. See also *Twelfth Report and Order*, 15 FCC Rcd at 12265, para. 115 (concluding that a carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service offered on tribal lands may petition the Commission for designation under section 214(e)(6) without first seeking designation from the state commission).

<sup>183</sup>See *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4081 (2000) (*Tribal Policy Statement*).

<sup>184</sup>See NTTA Comments at 5-8; See also *Tribal Policy Statement* at 4.

<sup>185</sup>See NTTA Comments at 4.

<sup>186</sup>See NTTA Comments at 4. See also 47 U.S.C. § 553(b), which provides an exception to the notice and comment requirement for "rules of agency organization, procedure, or practice."

<sup>187</sup>Although commenters request that the FCC impose mandatory requirements upon state commissions that exercise jurisdiction over ETC designations on tribal lands, we find state commissions are better suited to determine how to amend their ETC designation proceedings that involve tribal lands, in order to encourage consultation and participation by the affected tribal governments and tribal regulatory authorities.

## V. ANNUAL CERTIFICATION AND REPORTING REQUIREMENTS

68. Our rules currently require all ETCs to make an annual certification, on or before October 1, that universal service support will be used for its intended purposes.<sup>188</sup> As recommended by the Joint Board, we maintain and augment this requirement. Specifically, in order to continue to receive universal service support each year, we require each ETC over which we have jurisdiction, including an ETC designated by the Commission prior to this Report and Order, to submit annually certain information regarding its network and its use of universal service funds.<sup>189</sup> These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act.<sup>190</sup> In addition, following the effective date of this Report and Order, we anticipate initiating a proceeding to develop procedures for review of these annual reports. Moreover, we anticipate initiating a separate proceeding on or before February 25, 2008, to examine whether the requirements adopted herein are promoting the use of high-cost support by ETCs in a manner that is consistent with section 254 of the Act. We further clarify that a carrier that has been previously designated as an ETC under section 214(e)(6) does not have to reapply for designation, but must comply with the annual certification and reporting requirements on a going-forward basis.

69. Every ETC designated by the Commission must submit the following information on an annual basis:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.<sup>191</sup> The information should be submitted at the wire center level;
- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).<sup>192</sup> An outage is defined as a significant degradation in the ability of an

<sup>188</sup> 47 C.F.R. §§ 54.313, 54.314.

<sup>189</sup> These reporting requirements go beyond the current certification requirements of sections 54.313 and 54.314 of the Commission's rules. See 47 C.F.R. §§ 54.313, 54.314 (requiring annual certification that carrier is using high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."). See also 47 U.S.C. § 254(e).

<sup>190</sup> See e.g., 47 C.F.R. § 54.313; 54.314.

<sup>191</sup> If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing. An ETC that has not previously submitted a network improvement plan should include a description of improvements or upgrades it has made since the date of its initial designation.

<sup>192</sup> See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.<sup>193</sup> Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;<sup>194</sup>

- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;<sup>195</sup>
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, *e.g.*, the CTIA Consumer Code for Wireless Service;<sup>196</sup>
- (6) certification that the ETC is able to function in emergency situations;<sup>197</sup>
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

<sup>193</sup> See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

<sup>194</sup> We do not adopt the threshold established in the *Outage Reporting Order* that, for an outage to be included in a report, it must potentially affect 900,000 user minutes of either telephony or associated data. See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9. In particular, we believe that a user minute threshold may be insufficient for the purpose of determining ETC functionality during emergency situations in designated service areas because populations can vary. As a result, we instead require that ETCs report any outages that potentially affect 10% or more of their customers in a designated service area. Unlike the *Outage Reporting Order*, however, we require these reports annually instead of shortly after the outage occurs.

<sup>195</sup> See *supra* para. 22 for a description of the steps a carrier must take to provide service upon reasonable request.

<sup>196</sup> *CTIA, Consumer Code for Wireless Service*, available at [http://www.wow-com.com/pdf/The\\_Code.pdf](http://www.wow-com.com/pdf/The_Code.pdf). Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

<sup>197</sup> If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.



70. We conclude that these reporting regulations are reasonable and consistent with the public interest and the Act. These reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligation under section 214(e) of the Act to provide supported services throughout their designated service areas.<sup>198</sup> The administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.<sup>199</sup>

71. We encourage state commissions to adopt these annual reporting requirements. To the extent that they do so, we urge state commissions to apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements.<sup>200</sup> In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

72. If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC.<sup>201</sup> Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.<sup>202</sup>

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<sup>198</sup>In addition, the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC. 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

<sup>199</sup>See 47 U.S.C. § 254(b)(3).

<sup>200</sup>See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6441-42, para. 43; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1584-85, para. 46; *TOPUC v. FCC*, 183 F.3d at 417-18.

<sup>201</sup>Rural Telecommunications Associations Comments at 48-50, US Cellular Comments at 20-23. In addition, carriers must submit their reports on a timely basis. In order to encourage timely filings, if a carrier files its annual reports late, it will not receive the entire amount of funding for the year. Instead, it will lose funding for the quarter of the funding year, consistent with how late it files. For example, if a carrier files its report on December 10, it will lose funding for the first quarter of the next year. If the carrier does not file until the second quarter after the due date, for example, on February 4, it will not receive funding for the first two quarters.

<sup>202</sup>See *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15174, para. 15 (2000), recon. pending. In addition, state commissions that believe support is not being used for its intended purposes may refrain from certifying a competitive ETC, which in turn will suspend distribution of high-cost support to that ETC.

## VI. OTHER ISSUES

### A. Service Area Redefinition Process

73. Section 214(e)(5) of the Act provides that states may establish geographic service areas within which competitive ETCs are required to comply with universal service obligations and are eligible to receive universal service support.<sup>203</sup> For an area served by a rural incumbent LEC, however, the Act states that a company's service area for the purposes of ETC designation will be the rural incumbent LEC's study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company."<sup>204</sup> This process of changing the incumbent LEC's study area — and therefore the competitive ETC's service area — is known as the redefinition of a service area. The Commission adopted section 54.207(c) of its rules to implement this requirement.<sup>205</sup>

74. In its *Recommended Decision*, the Joint Board recommended that the Commission retain procedures established by the Commission in 1997 for the redefinition of rural service areas.<sup>206</sup> We agree with that recommendation, and do not believe that changes are necessary at this time to our procedures for redefining rural service areas. We agree with the Joint Board that in redefining an incumbent LEC's study area so as to conform with the service area of a new ETC, the states and Commission should continue to work in concert to decide whether a different service area definition would better serve the public interest.<sup>207</sup> First, under the current redefinition procedures for new ETCs, both state commissions and the Commission employ rigorous and fact-intensive analyses of requests for service area redefinitions that examine the impact of any redefinition on the affected rural incumbent LEC's ability to serve the entire study area, including

<sup>203</sup> See 47 U.S.C. § 214(e)(5) ("The term 'service area' means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms.")

<sup>204</sup> *Id.*

<sup>205</sup> Section 54.207(c) of the Commission's rules provides the mechanism by which a state commission may propose to redefine a rural incumbent LEC's service area for purposes of determining universal service obligations and support. See 47 C.F.R. §§ 54.207(a), (c). The Commission has authority to propose a service area redefinition on its own motion under section 54.207(d) of the Commission's rules, but such redefinition would not go into effect without the agreement of the relevant state commission. See 47 C.F.R. § 54.207(d). Under section 54.207(c)(1), a state may petition the Commission for a redefinition or a party may petition the Commission with the state's proposal to redefine. The petition must contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural carrier. See 47 C.F.R. § 54.207(c)(1). Section 54.207(c)(3) provides that the Commission may initiate a proceeding to consider a state commission's proposal to redefine the area served by a rural incumbent LEC within 90 days of the release date of a public notice. See 47 C.F.R. § 54.207(c)(3). If the Commission initiates a proceeding to consider the petition, the proposed definition will not take effect until both the state commission and the Commission agree upon the definition of a rural carrier service area, in accordance with section 214(c)(5) of the Act. If the Commission does not act on a petition to redefine a service area within 90 days of the release of the public notice, the definition proposed is deemed approved by the Commission and takes effect in accordance with state procedures. See 47 C.F.R. § 54.207(c)(3)(ii).

<sup>206</sup> See *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

<sup>207</sup> See *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

the potential for creamskimming that may result from the redefinition.<sup>208</sup> In addition, public comment is invited during every step in the process to ensure that the states and Commission are fully apprised of any impact the redefinition may have on the rural incumbent LEC.<sup>209</sup>

75. We disagree with commenters that argue that the Commission should adopt rules prohibiting redefinition below the study area level when new ETCs are designated in an incumbent LEC's service area.<sup>210</sup> In particular, we find that this proposal ignores the provision in section 214(e)(5) that allows redefinition to occur.<sup>211</sup> In any event, the process described above adequately protects against harm to the rural incumbent LEC that may result from redefinition. We also reject the argument posed by certain commenters that contend that the Commission should require redefinition of all study areas for which competitive ETCs seek designation or have been designated instead of redefining service areas on a case-by-case basis.<sup>212</sup> At this time, we believe that the existing case-specific analysis adequately protects the interests of incumbent LECs.

## B. Pending Redefinition Petitions

76. The Commission has before it several petitions seeking redefinition of incumbent LEC study areas.<sup>213</sup> We grant these petitions as described below. These petitions, which were filed by either a competitive ETC or a state commission, fall into three categories. One category involves

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<sup>208</sup>See *supra* paras. 48-52. The Commission employs the same creamskimming analysis based on population density data used in the ETC designations for which it possesses jurisdiction for redefinition petitions. See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6440, para. 39; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1582, para. 42. See also *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

<sup>209</sup>See *Recommendation Decision*, 19 FCC Rcd at 4279, para. 55.

<sup>210</sup>See USTA Comments at 12-13; Nebraska RICs Reply Comments at 13.

<sup>211</sup>47 U.S.C. § 214(e)(5).

<sup>212</sup>See Dobson Comments at 15; GCI Comments at 24; Rural Telecommunications Associations Comments at 23; US Cellular Comments at 40; Cox Reply Comments at 3-5.

<sup>213</sup>See Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan, filed December 17, 2003 (ALLTEL-Michigan Petition); Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Wisconsin, filed November 21, 2003 (ALLTEL-Wisconsin Petition); Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR § 54.207(c), for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company, filed August 12, 2002 (Colorado PUC-Delta Petition); Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR § 54.207(c), for Commission Agreement in Redefining the Service Area of Wiggins Telephone Association, a Rural Telephone Company, filed May 30, 2003 (Colorado PUC-Wiggins Petition); Petition of the Minnesota Public Utilities Commission for FCC Agreement to Redefine the Service Areas of Twelve Minnesota Rural Telephone Companies, filed August 7, 2003 (Minnesota PUC Petition); Petition by RCC Minnesota, Inc., Pursuant to 47 C.F.R. Section 54.207(c), for Commission Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of Maine, filed June 24, 2003 (RCC Minnesota-State of Maine Petition); American Cellular Corporation Petition for Agreement in Redefining the Service Area Requirement for Certain Rural Telephone Company Study Areas in the State of Wisconsin pursuant to 47 C.F.R. § 54.207(c), filed July 16, 2004 (American Cellular Petition); Petition of CTC Telecom, Inc. for Redefinition of the Service Area of CenturyTel of the Midwest-Wisconsin, filed June 30, 2004 (CTC Telecom-Wisconsin); Petition by RCC Minnesota, Inc. and Wireless Alliance, LLC., Pursuant to 47 C.F.R. Section 54.207(c), for Commission Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of Minnesota, filed August 27, 2004 (RCC Minnesota-State of Minnesota Petition).

petitions seeking to redefine a rural incumbent LEC's service area into multiple smaller service areas at the wire center level.<sup>214</sup> The second category of petitions involves ETCs that were designated for service areas that included portions of the incumbent LEC's wire centers instead of entire wire centers. These petitions seek to redefine the rural incumbent LEC study area for the same areas, including some partial wire centers, such that the ETC's designated service area and the incumbent LEC's redefined service area would be the same.<sup>215</sup> The third category involves two petitions that seek to redefine the incumbent LEC's service area into multiple smaller service areas at the wire center level.<sup>216</sup> However, the state commissions had designated these carriers' service areas to include some areas smaller than the incumbent LEC's wire centers. As a result, the designated service areas and the proposed redefined areas are not the same.

77. Since these petitions were filed,<sup>217</sup> the Commission released the *Highland Cellular ETC Designation Order*, in which the Commission rejected Highland's petition for designation in only a portion of a rural incumbent LEC's service area.<sup>218</sup> Specifically, Highland requested that it be allowed to serve parts of the rural incumbent LEC's wire centers. We concluded that designating an ETC for only a portion of a wire center served by a rural incumbent LEC would be inconsistent with the public interest.<sup>219</sup> We also found that the competitive ETC applicant must commit to provide the supported services to customers throughout a minimum geographic area. We concluded that a rural telephone company's wire center is the appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county or town boundary lines.<sup>220</sup> We continue to believe, as we stated in the *Highland Cellular ETC Designation Order*, that requiring a competitive ETC to serve an entire wire center will make it less likely that the competitor will relinquish its ETC designation at a later date and will best address creamskimming concerns in an administratively feasible manner.<sup>221</sup>

78. In this Report and Order, we conclude that the same principles that we apply to ETC designation requests also apply when we are considering whether to grant a petition for redefinition.<sup>222</sup> We recognize, however, that because of the timing of the underlying state ETC designation decisions,

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<sup>214</sup>See ALLTEL-Michigan Petition; ALLTEL-Wisconsin Petition; CTC Telecom-Wisconsin; See Colorado PUC-Delta Petition; Colorado PUC-Wiggins Petition.

<sup>215</sup>See American Cellular Petition; Minnesota PUC Petition.

<sup>216</sup>See RCC Minnesota-State of Maine Petition; RCC Minnesota-State of Minnesota Petition.

<sup>217</sup>Three of the pending petitions seeking redefinition were submitted subsequent to the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* decisions. Specifically, the *CTC Telecom-Wisconsin* was filed on June 30, 2004, the *American Cellular Petition* was filed on July 16, 2004, and the *RCC Minnesota-State of Minnesota Petition* was filed on August 27, 2004. We believe that because these proceedings were being conducted as our *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* decisions were being released, it was difficult for the petitioners and their respective state commissions to be fully aware of the requirements of our decisions.

<sup>218</sup>See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6438, para. 33.

<sup>219</sup>See *id.*

<sup>220</sup>See *id.*

<sup>221</sup>*Id.*

<sup>222</sup>See *supra* para. 74.

many of these pending petitions could not be in full compliance with the factors considered in the *Highland Cellular ETC Designation Order*. For example, some petitions follow the ETC designation and redefinition framework that was applied by the Commission prior to the *Highland Cellular ETC Designation Order*.<sup>223</sup> Other petitions have not presented a creamskimming analysis that examines population density data to determine whether the ETC is seeking designation only in high-density wire centers of the affected study area, which could undercut the rural incumbent LEC's ability to provide service throughout its entire study area, as detailed in the *Virginia Cellular ETC Designation Order*.<sup>224</sup> As a result, because the Commission had not fully elaborated on its creamskimming analysis based on population density or adopted the policy that competitive LEC service areas should not be defined below the wire center level, these state commissions granting ETC designation and seeking redefinition could not have applied the requirements set forth in the *Highland Cellular ETC Designation Order*.

79. Because the states complied with applicable federal rules and guidelines at the time the redefinition petitions were filed, we decline to upset those determinations. We therefore find that granting these redefinition petitions would serve the public interest. Accordingly, we grant these redefinition petitions pursuant to section 214(e)(5) of the Act.<sup>225</sup> On a going forward basis, however, we intend to rigorously apply the standards set forth in the *Highland Cellular ETC Designation Order* and *Virginia Cellular ETC Designation Order*.

### C. Identification of Wireless Customer Locations

80. *Background*. In the *Rural Task Force Order*, the Commission required wireless competitive ETCs to use the customer's billing address to identify the location of a mobile wireless customer.<sup>226</sup> The Commission concluded that this approach was reasonable and the most administratively simple solution to the problem of determining the location of a wireless customer for universal service purposes.<sup>227</sup> The Commission recognized, however, that the use of a customer's billing address might allow carriers to identify a customer in a high-cost zone when service is primarily taken in a low-cost zone for the purpose of receiving a higher level of per-line support.<sup>228</sup> The Commission stated that it would take appropriate enforcement action if an ETC were to engage in such arbitrage, and that it might revisit the use of a customer's billing address as more mobile wireless carriers become eligible to receive support.<sup>229</sup>

81. In the *Rural Task Force Order*, the Commission declined to use the Mobile Telecommunications Sourcing Act (MTSA) definition of "place of primary use" to determine a mobile wireless customer's location.<sup>230</sup> In declining to adopt the MTSA definition to determine wireless

<sup>223</sup> See *RCC Alabama ETC Designation Order*, 17 FCC Rcd at 23547-49, paras. 37-42.

<sup>224</sup> See e.g., ALLTEL-Wisconsin Petition; RCC Minnesota-State of Maine Petition. See *supra* paras. 49-51.

<sup>225</sup> 47 U.S.C. § 214(e)(5).

<sup>226</sup> *Rural Task Force Order*, 16 FCC Rcd at 11314, para. 180.

<sup>227</sup> *Rural Task Force Order*, 16 FCC Rcd at 11314-15, paras. 180-181.

<sup>228</sup> *Rural Task Force Order*, 16 FCC Rcd at 11315-16, para. 183.

<sup>229</sup> *Id.*

<sup>230</sup> *Rural Task Force Order*, 16 FCC Rcd at 11315, para. 182. The MTSA, which was intended to address the difficulty in identifying the site of a mobile telephone call for transactional tax purposes, sources all wireless calls and mobile telecommunications services to the "place of primary use." Mobile Telecommunications Sourcing Act, 4 (continued....)

customer location for universal service purposes, the Commission expressed concern that states might not have established databases pursuant to the Act, and that use of the MTSA definition might impose undue administrative burdens on mobile wireless ETCs.<sup>231</sup> In its *Recommended Decision*, the Joint Board determined that the Commission should further develop the record on defining mobile wireless customer location in terms of place of primary use, as defined by the MTSA, for universal service purposes.<sup>232</sup> In particular, the Joint Board concluded that the place of primary use represents the preferred definition of wireless customer location for universal service purposes because it reflects whether a customer actually uses mobile wireless phone service in a high-cost area. The Joint Board therefore recommended that the Commission develop the record on: (1) whether the MTSA's place of primary use approach is an efficient method for determining the location of mobile service lines; (2) whether a "place of primary use" definition should be optional or mandatory; (3) whether a definition based on place of primary use would alleviate concerns about fraudulent billing addresses, and; (4) if the place of primary use definition is adopted, how it should work in conjunction with virtual NXX.<sup>233</sup>

82. *Discussion.* We are not convinced that there is a significant difference between our current definition, which relies on a customer's billing address, and the MTSA definition, which relies on the customer's residential street address or primary business street address. In a large percentage of cases, the two will be the same. In both cases, the underlying address information will be provided by the customer, who is unlikely to be providing false information in order to increase universal service payments to its service provider.<sup>234</sup> If anything, customers have a greater incentive to provide false or misleading information under the MTSA, which will govern applicable taxes imposed on the customer. Further, as noted in the *Rural Task Force Order*, if a competitive ETC misuses a customer's billing address by identifying a customer in a high-cost zone when service is primarily provided in a low-cost zone for the purpose of receiving a higher level of per-line support, the Commission may take appropriate enforcement action.<sup>235</sup> We further note that, to date, we are not aware of any carriers filing petitions before the Commission contending that a wireless ETC is misusing customer billing addresses for arbitrage purposes.

83. As a result, we decline to change our method for identifying the location of mobile wireless customers. We, therefore, do not adopt the place of primary use definition at this time. Moreover, we note that few commenters provided responses to the specific questions from the Joint

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U.S.C. §§ 116-126. In the MTSA, the place of primary use is defined as "the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be - (A) the residential street address or the primary business street address of the customer; and (B) within the licensed service area of the [customer's mobile telecommunications service provider]." *Id.*

<sup>231</sup> *Rural Task Force Order*, 16 FCC Rcd at 11315, para. 182.

<sup>232</sup> *See Recommended Decision*, 19 FCC Rcd at 4280, para. 57.

<sup>233</sup> *Recommended Decision*, 19 FCC Rcd at 4300, para. 103. NXX refers to the first three digits of a seven digit telephone number. Virtual NXX is a service where carriers assign an NXX to a customer who is physically not located in the exchange where the NXX is rate centered.

<sup>234</sup> 4 U.S.C. § 122(a)(1) (service providers may rely on the address provided by the customer).

<sup>235</sup> *See Seventh Report and Order*, 14 FCC Rcd at 8115-16 para. 78 (noting the availability of the formal complaint process under section 208 of the Act if a State or other party believes a carrier has mis-applied its high-cost support in a manner that violates the Communications Act or Commission rules). *See also Ninth Report and Order*, 14 FCC Rcd at 20488, para. 110.

Board.<sup>236</sup> The Iowa Utilities Board, one of the few commenters responding to the Joint Board's questions, submitted an analysis concerning the billing address methodology that found that only a small number of customers have billing addresses in locations other than where service is located.<sup>237</sup> Given the limited data we currently have, we see no reason to modify our method of determining wireless customer locations.<sup>238</sup>

#### D. Accurate, Legible, and Consistent Maps

84. *Background.* Under the Commission's rules, a rural incumbent LEC electing to disaggregate and target high-cost support must submit to USAC "maps which precisely identify the boundaries of the designated disaggregation zones of support within the incumbent LEC's study area."<sup>239</sup> In the *Rural Task Force Order*, the Commission explained that "the integrity and flow of information to competitors is central to ensuring that support is distributed in a competitively neutral manner."<sup>240</sup> The Commission further stated that, "in order to ensure portability and predictability in the delivery of support," it would require rural incumbent LECs to "submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified."<sup>241</sup> USAC was directed to make those maps available for public inspection by competitors and other interested parties.<sup>242</sup> Some commenters indicate that the maps filed by rural incumbent LECs pursuant to section 54.315(f)(1) and the information available through USAC are of varying quality and utility.<sup>243</sup> Others suggest that improved quality and reliability of maps submitted by incumbent LECs would allow for better targeting of support.<sup>244</sup>

85. In response to the concerns raised by commenters, the Joint Board recommended that the Commission direct USAC to develop standards for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules in a uniform, electronic format. The Joint Board

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<sup>236</sup>CenturyTel states that the billing address method and primary use standard proposed by the Joint Board are not sufficient for determining wireless ETC lines in a service area. See CenturyTel Comments at 10-11. ITTA and Sprint support the Joint Board's proposal that wireless customer location should be the place of primary use. See ITTA Comments at 28, Sprint Comments at 35.

<sup>237</sup>Iowa Board Comments at 8-9. Centennial also stated that no evidence suggests the current method results in support being distributed improperly. Centennial Comments at 17.

<sup>238</sup>For similar reasons, we see no need to adopt CenturyTel's proposal to provide support to wireless ETC customers where usage primarily occurs in high-cost areas. See CenturyTel Comments at 10-11. Specifically, because we do not distribute high-cost support based on an ETC's customer's usage, we do not believe that we should look into wireless ETC customers' usage to determine support levels.

<sup>239</sup>47 C.F.R. § 54.315(f)(4).

<sup>240</sup>*Rural Task Force Order*, 16 FCC Rcd at 11307-08, para. 161.

<sup>241</sup>*Id.*

<sup>242</sup>*Id.*

<sup>243</sup>See, e.g., US Cellular Comments at 17-18; Rural Indep. Competitive Alliance Comments at 27.

<sup>244</sup>See *Recommended Decision*, 19 FCC Rcd at 4300, n. 290 ("What will improve the ability to target subscribers is an FCC requirement that incumbent LECs who disaggregate support submit accurate and legible cost zone maps in a consistent electronic format so that competitive ETCs are able to easily determine the appropriate cost zones for customers." (quoting Rural Cellular Ass'n/Alliance of Rural CMRS Carriers Comments at 26)).

contended that the development of such standards would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC and that, as the universal service administrator, USAC is the appropriate entity to develop such standards.<sup>245</sup>

86. *Discussion.* We agree with the Joint Board and commenters and find that accurate, legible and consistent maps would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC.<sup>246</sup> Among other things, accurate and legible maps will assist in the ETC designation process and ensure that high-cost support is targeted to the appropriate service areas. Accordingly, we direct USAC, in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules.

#### E. Support to Newly Designated ETCs

87. *Background.* Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>247</sup> Once a carrier is designated as an ETC, additional requirements also must be satisfied before a carrier can begin receiving high-cost universal service support. In particular, section 254(e) requires that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."<sup>248</sup>

88. To implement this statutory provision, the Commission adopted an annual certification requirement. Specifically, sections 54.313 and 54.314 of the Commission's rules provide that state commissions must file an annual certification with USAC and with the Commission stating that all high-cost support received by carriers within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."<sup>249</sup> In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and to USAC that federal high-cost support will be used in a manner consistent with section 254(e).<sup>250</sup> Sections 54.313 and 54.314 also provide that certifications must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.<sup>251</sup> If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.<sup>252</sup> The Commission established this schedule to allow USAC sufficient time to process section 254(e)

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<sup>245</sup>See *Recommended Decision*, 19 FCC Rcd at 4301, para. 105.

<sup>246</sup>Dobson Comments at 31; Iowa Board Comments at 9-10.

<sup>247</sup>47 U.S.C. § 254(e).

<sup>248</sup>47 U.S.C. § 254(e).

<sup>249</sup>47 C.F.R. §§ 54.313, 54.314. The certification requirement for non-rural ETCs is found in section 54.313 of the Commission's rules.

<sup>250</sup>See *Rural Task Force Order*, 16 FCC Rcd at 11318, para. 189; 47 C.F.R. § 54.314(b).

<sup>251</sup>47 C.F.R. § 54.314(d)(1).

<sup>252</sup>See 47 C.F.R. § 54.314(d).



certifications and to calculate estimated high-cost demand amounts for submission to the Commission.<sup>253</sup>

89. Under the Commission's current certification rules, the timing of a carrier's ETC designation may cause it to miss a certification filing deadline. As a result, a recently designated ETC's support may not begin to be disbursed until well after the ETC's designation date. For example, if a carrier is designated as an ETC on December 20, and the state commission with jurisdiction over the carrier files a certification on behalf of the ETC on January 15, that carrier will not begin to receive support until the third quarter of that year — more than six months after the carrier was designated an ETC. Therefore, although the Commission's rules provide a mechanism for certifications to be filed on a quarterly basis, payment of high-cost support for recently designated ETCs under this schedule may be delayed until well after the initial certification is made. Consequently, newly designated ETCs that have missed the Commission's certification filing deadlines due to the timing of their ETC designation date have been granted waivers of the certification filing deadlines.<sup>254</sup>

90. Under section 54.307(d) of the Commission's rules, as a prerequisite for universal service high-cost support, ETCs serving both rural and non-rural service areas must also file the number of working loops and other related data for the customers they serve in the incumbent's service area.<sup>255</sup> To ensure that the interval between the submission of data and receipt of support is as short as possible in rural carrier study areas, the Commission requires that ETCs submit such line count data on a quarterly basis.<sup>256</sup> Therefore, under the quarterly schedule established by the Commission, line count data are due on July 31, September 30, December 30, and March 30 of each year.<sup>257</sup> Consistent with

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<sup>253</sup> See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Two months prior to the beginning of each quarter, USAC submits to the Commission estimated demand for the universal service support mechanisms, including high-cost support. See 47 C.F.R. § 54.709(a)(3). Therefore, for the first quarter, USAC submits estimated demand amounts to the FCC on or before November 1. In order to submit an accurate estimate by that date, USAC needs to know no later than October 1 which carriers have been certified under the Commission's rules. See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

<sup>254</sup> See, e.g., *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, Order, CC Docket No. 96-45, 16 FCC Rcd 5784 (2001) (granting a waiver of the October 1 certification filing deadline); *Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 17 FCC Rcd 24387 (Wireline Compet. Bur. 2002) (granting a waiver of the October 1 certification filing deadline); *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-1169 (Wireline Compet. Bur. 2002) (granting a waiver of the October 1 certification filing deadline). See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Declaratory Ruling, CC Docket No. 96-45, 18 FCC Rcd 14689, 14691, para. 6 (Wireline Compet. Bur., Telecom. Access Policy Div. rel. July 18, 2003) (*Western Wireless Order*).

<sup>255</sup> 47 C.F.R. § 54.307(b).

<sup>256</sup> 47 C.F.R. § 54.307; see *Rural Task Force Order*, 16 FCC Rcd at 11298, para. 134; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twentieth Order on Reconsideration, 15 FCC Rcd 12070, 12078, para. 18 (2000) (*Twentieth Order on Reconsideration*).

<sup>257</sup> 47 C.F.R. § 54.307(c). Specifically, section 54.307 states, "(c) [a] competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule. (1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year; (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year; (3) No later than December (continued....)"

section 54.307(c) of the Commission's rules, under its administration of the high-cost program, USAC bases its quarterly support payments on these quarterly line count data submissions. For ETCs designated in areas served by rural incumbent LECs, line count data submitted on March 30 are used to target support for the third and fourth quarters of each year, line count data filed on September 30 are used to target support for the first quarter of the filing year, and line count data filed on December 30 are used to target support for the second quarter of the filing year. For ETCs designated in areas served by non-rural incumbent LECs, line counts filed on March 30 are used for third quarter support, line counts filed on July 31 are used for fourth quarter support, line counts filed on September 30 are used for first quarter support, and line counts filed on December 30 are used for second quarter support.<sup>258</sup>

91. Under the filing schedules described above, carriers that receive a late ETC designation may miss quarterly filing deadlines that could affect USAC's cost estimates for the relevant quarter. Also, an ETC receiving a late designation that did not file quarterly line counts in anticipation of its ETC designation could suffer significant delay in receipt of support. In light of the delay in support that can be caused by ETC designations occurring after line count certification filing deadlines, we sought comment in the *ETC Designation NPRM* on whether to amend our rules to allow newly designated ETCs to begin receiving high-cost support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date.<sup>259</sup>

92. *Discussion.* We conclude that in order to provide universal service support to newly designated ETCs on a timely basis, ETCs shall be eligible for support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date.<sup>260</sup> As suggested by commenters, including USAC, revising the certification and line count deadline rules will enable customers of newly designated ETCs to begin to receive the benefits of universal service support as of the ETC's designation date. Additionally, this modification will eliminate the need for carriers to seek waivers of filing deadline rules in order to receive support on a timely basis. At the same time, for administrative efficiency and predictability, we must impose some time limits so that USAC can accurately calculate total high-cost support payments. Therefore, a newly-designated ETC's certification and line-count data must be filed within 60 days of its initial ETC designation from the state commission or Commission. If the newly designated ETC does not file within 60 days of the carrier's ETC designation date, the ETC will not receive support retroactively to its ETC designation date, but only on a going-forward basis. We note that although USAC supports this revision, it has indicated that such funding should not flow to a newly designated ETC until its line count data are included in USAC's quarterly demand projections.<sup>261</sup> In order to avoid any administrative burdens associated with processing payments to a newly designated ETC, we agree that USAC shall distribute support only after the required line count data are available in USAC's quarterly

(Continued from previous page)

30th of each year, submit data as of June 30th of the existing calendar year; (4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year."

<sup>258</sup>See *Twentieth Order on Reconsideration*, 15 FCC Rcd at 12078, para. 17, n. 25.

<sup>259</sup>See *ETC Designation NPRM*, 19 FCC Rcd at 10801, para. 5. See also 47 C.F.R. §§ 54.307, 54.313, 54.314.

<sup>260</sup>See Appendix A for the revised rules.

<sup>261</sup>See USAC Comments at 19.

demand projections.<sup>262</sup> As a result, unless a carrier has filed its data with USAC in advance of its ETC designation date, a carrier might have to wait an additional quarter before it begins receiving support.

#### F. Accepting Untimely Filed Certifications For Interstate Access Support.

93. *Background.* Section 54.809(c) of the Commission's rules states that in order for an ETC to receive Interstate Access Support (IAS), the ETC must file an annual certification on the date that it first files line count information and thereafter on June 30 of each year.<sup>263</sup> As a result, the current rule prohibits an otherwise eligible carrier from receiving IAS for as much as a year if it misses the annual certification deadline. In the *MAG Order*, the Commission determined that a carrier that untimely files its annual certification for Interstate Common Line Support (ICLS) would not be eligible for support until the second calendar quarter after the certification is filed.<sup>264</sup> For example, if a carrier untimely files its required annual June 30 certification on July 15, it will be eligible to receive ICLS support beginning January 1 of the following year. Therefore, the *MAG Order* establishes a supplemental certified filing process that prevents an ETC from losing ICLS for an entire year if it misses the June 30 certification deadline.<sup>265</sup> In the *ETC Designation NPRM*, the Commission proposed adopting a similar supplemental process for accepting untimely certifications for the receipt of IAS.<sup>266</sup>

94. *Discussion.* We adopt the proposal in the *ETC Designation NPRM* that establishes a procedure for accepting untimely filed certifications for IAS. We conclude that allowing an ETC that misses the June 30 certification deadline to receive IAS support following the filing of the untimely certification will not unduly harm a carrier that files an annual certification late and will eliminate the need for a carrier to seek a waiver of the filing certification deadlines rules.<sup>267</sup> At the same time, by not allowing a carrier to receive IAS support for the entire year, the carrier still has the incentive to file the certification on a timely basis in order to not interrupt its receipt of IAS support. We, therefore, adopt a quarterly certification schedule to accommodate late filings. Specifically, a price cap LEC or competitive ETC that misses the June 30 annual IAS certification deadline shall receive support pursuant to the following schedule: (1) carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year; (2)

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<sup>262</sup>See e.g., *Federal-State Joint Board on Universal Service, Grande Communications, Inc.*, Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations, CC Docket No. 96-45, Order, 19 FCC Rcd 15580, 15584, para. 9, n.34 (2004) (establishing a process for USAC to disburse funds retroactively to an ETC's designation date).

<sup>263</sup>47 C.F.R. § 54.809(c). IAS helps offset interstate access charges for price-cap carriers. 47 C.F.R. §§ 54.800, *et. seq.* Each competitive ETC that provides supported services within the study area of a price-cap local exchange carrier receives IAS for each line that it serves within that study area. 47 C.F.R. § 54.807(a).

<sup>264</sup>*Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket No. 98-77, Report and Order in CC Docket 98-166, 16 FCC Rcd 19613, 19687-88, para. 176 (2001) (MAG Order); 47 C.F.R. § 54.904(d).*

<sup>265</sup>*MAG Order*, 16 FCC Rcd at 19687-88, para. 176.

<sup>266</sup>See *ETC Designation NPRM*, 19 FCC Rcd at 10801, para. 5.

<sup>267</sup>See Appendix A for the revised rule.

carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year; and (3) carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

## VII. PROCEDURAL MATTERS

### A. Regulatory Flexibility Analysis

95. As required by the Regulatory Flexibility Act, 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the *Report and Order*, set forth at Appendix C.

### B. Congressional Review Act

96. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>268</sup> In addition, the Commission will send a copy of the *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* (or summaries thereof) will also be published in the *Federal Register*.<sup>269</sup>

### C. Paperwork Reduction Act

97. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

### D. Filing Procedures

98. Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>270</sup> interested parties may file comments not later than 60 days after publication of this *Report and Order* in the Federal Register and may file reply comments not later than 90 days after publication of this Report and Order in the Federal Register. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>271</sup>

99. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body

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<sup>268</sup>See 5 U.S.C. § 801(a)(1)(A).

<sup>269</sup>See 5 U.S.C. § 604(b).

<sup>270</sup>47 C.F.R. §§ 1.415, 1.419.

<sup>271</sup>See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322, 11326 (1998).

of the message, "get form." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at [www.fcc.gov/e-file/email.html](http://www.fcc.gov/e-file/email.html).

100. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

101. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

<b>If you are sending this type of document or using this delivery method...</b>	<b>It should be addressed for delivery to...</b>
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12 <sup>th</sup> Street, SW Washington, DC 20554

102. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications, at the filing window at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case WC Docket No. 02-60, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12st Street, S.W., Room CYB402, Washington, D.C. 20554 (see alternative addresses above for delivery by hand or messenger).

103. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554 (see alternative addresses above for delivery by hand or messenger) (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

104. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on this *Report and Order*, i.e., on or before 60 days after publication of this *Report and Order* in the Federal Register. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before 60 days after publication of this *Report and Order* in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, or via the Internet to [jbherman@fcc.gov](mailto:jbherman@fcc.gov), and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17<sup>th</sup> Street, N.W., Washington, D.C. 20503 or via the Internet to [JThornton@omb.eop.gov](mailto:JThornton@omb.eop.gov).

105. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### **E. Further Information**

106. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This Report and Order can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/ccb/universalservice/highcost>.

107. For further information, contact Gina Spade or Thomas Buckley at (202) 418-7400 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

### **VIII. ORDERING CLAUSES**

108. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 214, 254, and 403, this *Report and Order* IS ADOPTED.

109. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in the attached Appendix A, effective thirty (30) days after the publication of this *Report and Order* in the Federal Register, except that the requirements subject to the Paperwork Reduction Act are not effective until approved by Office of Management and Budget. The Commission will publish a document in the Federal Register announcing the effective date of the requirements.

110. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

111. IT IS FURTHER ORDERED that the Universal Service Administrative Company shall to develop standards for the submission of any maps that eligible telecommunications carriers are required to submit to the Universal Service Administrative Company under the Commission's rules, to the extent discussed herein.

112. IT IS FURTHER ORDERED that the petition for redefinition filed by the Colorado Public Utilities Commission, on August 12, 2002, IS GRANTED, to the extent discussed herein.

113. IT IS FURTHER ORDERED that the petition for redefinition filed by the Colorado Public Utilities Commission, on May 30, 2003, IS GRANTED, to the extent discussed herein.

114. IT IS FURTHER ORDERED that the petition for redefinition filed by RCC Minnesota, Inc, on June 24, 2003, IS GRANTED, to the extent discussed herein.

115. IT IS FURTHER ORDERED that the petition for redefinition filed by the Minnesota Public Utilities Commission, on August 7, 2003, IS GRANTED, to the extent discussed herein.

116. IT IS FURTHER ORDERED that the petition for redefinition filed by ALLTEL Communications, Inc., on November 21, 2003, IS GRANTED, to the extent discussed herein.

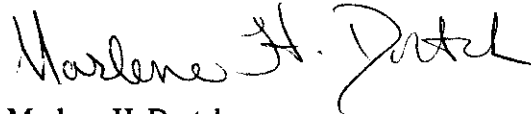
117. IT IS FURTHER ORDERED that the petition for redefinition filed by ALLTEL Communications, Inc., on December 17, 2003, IS GRANTED, to the extent discussed herein

118. IT IS FURTHER ORDERED that the petition for redefinition filed by CTC Telecom, Inc., on June 30, 2004, IS GRANTED, to the extent discussed herein.

119. IT IS FURTHER ORDERED that the petition for redefinition filed by American Cellular Corporation, on July 16, 2004, IS GRANTED, to the extent discussed herein.

120. IT IS FURTHER ORDERED that the petition for redefinition filed by RCC Minnesota, Inc. and Wireless Alliance, LLC, on August 27, 2004, IS GRANTED, to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

**APPENDIX A – FINAL RULES**

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 54 – UNIVERSAL SERVICE****Subpart C – Carriers Eligible for Universal Service Support**

1. Section 54.202 is added to subpart C to read as follows:

**§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.**

(a) On or after the effective date of these rules, in order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

- (1) (A) commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment; and  
  
(B) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.
- (2) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
- (3) demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
- (4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.



(5) certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under section 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determine that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.

2. Section 54.209 is added to subpart C to read as follows:

**§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.**

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

- (1) a progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;
- (2) detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the